Supreme Court, U.S.
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No. 80-1614

In the Supreme Court of the United States

OCTOBER TERM, 1981

GEORGE F. JEWETT, JR., et ux.,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE, MAYER, BROWN & PLATT

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July 16, 1981

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TABLE OF CONTENTS

	PAGE
Statement of Interest	1
Argument	2
Conclusion	3

TABLE OF AUTHORITIES

	PAGE
Case	
Keinath v. *Commissioner*, 480 F.2d 57 (8th Cir. 1973), *rev'g* 58 T.C. 352 (1972)	2
Statutes and Other Authorities	
United States Internal Revenue Code § 2518	2
Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (1976)	2
§ 2009(e)(2), 90 Stat. at 1896	2
H. R. Rep. No. 94-1380, 94th Cong., 2d Sess. 66 (1976), *reprinted in* 1976-3 C.B. (Vol. 3) 800	2
67-68, *reprinted in* 1976-3 C.B. (Vol. 3) 801-02	2

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STATEMENT OF INTEREST

Amicus curiae, MAYER, BROWN & PLATT, is a law firm with principal offices in Chicago, Illinois. A number of its clients and some of its partners are interested in the outcome of this proceeding because they are in a position substantially identical to that of petitioners. Both parties have consented to the filing of this brief.*

*Their consents have been filed with the Clerk.

ARGUMENT

In the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (1976), Congress changed the law governing the time for disclaimers. The legislative history of Section 2518 of the Internal Revenue Code of 1954 clearly indicates that the statute was intended primarily to overturn the decision of the Eighth Circuit Court of Appeals in *Keinath* v. *Commissioner*, 480 F.2d 57 (8th Cir. 1973), *rev'g.* 58 T.C. 352 (1972); *see* H. R. Rep. No. 94-1380, 94th Cong., 2d Sess. 66 (1976), *reprinted in* 1976-3 C.B. (Vol. 3) 800. The Congressional action, however, was prospective only, since it made the 1976 amendments applicable only to trusts created after December 31, 1976. Tax Reform Act of 1976, Pub. L. No. 94-455, § 2009(e)(2), 90 Stat. at 1896; H. R. Rep. No. 94-1380, 94th Cong., 2d Sess. 67-68, *reprinted in* 1976-3 C.B. (Vol. 3) 801-02.

In the case at bar, the Internal Revenue Service has attempted to extend the prospective rule of Section 2518 to transfers of property occurring prior to 1977. Taxpayers and their advisors have for many years relied on the assumption that a disclaimer, valid under state law, was valid for federal tax purposes as well if timely made. Disclaimers of interests that have not vested indefeasibly have been thought to be timely if made within a reasonable time after such interests do so vest. As indicated by Judge Harris in his dissenting opinion below, the only precedent from a Court of Appeals on this matter has been the *Keinath* case, which took that view. It would be highly inequitable to change the rule retroactively as to such taxpayers, particularly when Congress did not so intend. For

this Court to follow the opinion of the court below would give the 1976 statutory amendments retroactive effect contrary to the intent of Congress, and would frustrate the reasonable expectations of many taxpayers.

CONCLUSION

For the reason stated, *amicus curiae* urges that the holding of the Court of Appeals be reversed.

Respectfully submitted,

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